

HOUSE BILL 183

By Whitson

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 10; Title 3, Chapter 6; Title 4, Chapter 55; Title 8, Chapter 50, Part 5 and Title 57, relative to campaign finance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-10-102, is amended by deleting subdivisions (9) and (12); and is further amended by adding the following new subdivision:

() "Political action committee" means:

(A) A club, corporation, association, or other group of persons that receives contributions or makes expenditures to support or oppose a measure; or

(B) A club, corporation, association, or other group of persons that receives contributions or makes expenditures to support or oppose two (2) or more candidates for public office during a calendar year, and the contributions or expenditures in the aggregate exceed two thousand dollars (\$2,000);

SECTION 2. Tennessee Code Annotated, is amended by deleting from title 2, chapters 10 and 12, and titles 3 and 57 the language "political campaign" wherever it may appear and substituting "political action".

SECTION 3. Tennessee Code Annotated, Sections 2-10-105, is amended by adding the following language at the end of subsections (a) and (b):

The report of expenditures by a political action committee must consist of all amounts paid by the political action committee from received contributions.

SECTION 4. Tennessee Code Annotated, Section 2-10-106(b)(1), is amended by deleting the subdivision and substituting:

(1) A candidate who complies with the requirements of § 2-10-105(a) and (b), as applicable, and § 2-10-131(a), shall ensure that:

(A) All funds in a campaign account remain separate and segregated at all times from other funds, including from personal funds and the funds of a political action committee controlled either directly or constructively by the candidate; and

(B) All credit transactions incurred on behalf of the candidate's campaign activities or officeholder activities are separate and segregated at all times from other credit transactions incurred on behalf of the candidate personally, the candidate's business, if any, the candidate's non-campaign or non-officeholder related activity, or the activity of a political action committee controlled either directly or constructively by the candidate.

SECTION 5. Tennessee Code Annotated, Section 2-10-106(b)(3), is amended by deleting the subdivision and substituting:

(3) A candidate found to be in violation of subdivision (b)(1) commits a Class 2 offense.

SECTION 6. Tennessee Code Annotated, Section 2-10-108, is amended by deleting subsections (b) and (c) and substituting:

(b)

(1) All sworn complaints on a report of a candidate for state public office, a political action committee contributing to a candidate for state public office, or a political action committee registered with the registry of election finance must be filed in the office of the registry of election finance. The registry shall conduct a preliminary review to determine if the complaint is factually and legally sufficient.

(2) If the complaint is not factually and legally sufficient, the registry shall dismiss the complaint and notify the complainant. If the registry determines the complaint is factually and legally sufficient, then the registry may refer the complaint to the office of the attorney general and reporter, who shall conduct a preliminary investigation and report the findings of the investigation in writing to the registry. Alternatively, if the registry determines that the complaint is factually and legally sufficient and that the circumstances are appropriate, the registry may order the registry's staff to conduct an investigative audit of the alleged violator's campaign finance disclosure reports. In such instances, the alleged violator is obligated to produce all documentation required to be maintained by § 2-10-105(f) and to comply in good faith and with total candor with all requests for documentation or clarification properly requested by the registry's auditor or counsel.

(3) Once either the attorney general's investigation or the audit is complete, the registry shall set the complaint for a show cause hearing to determine if the registry should take action regarding the complaint, including, but not limited to, assessing civil penalties pursuant to § 2-10-110. Both the alleged violator and the complainant are entitled, upon request, to present evidence before the registry at or prior to the show cause hearing. The registry must receive adequate notice that evidence will be presented to the registry that is personally served at the office of the registry; sent by return receipt requested mail; or sent by electronic mail to the alleged violator and the complainant.

(4) The registry may determine the appropriate procedure for the presentation of evidence. After the conclusion of the show cause hearing, the

registry shall reduce its decision to writing and provide a written statement of the registry's decision to all parties.

(c) All sworn complaints on a report of a candidate for local public office, a political action committee contributing to a candidate for local public office, or a political action committee registered with a local election commission must be filed in the office of the district attorney general who represents the judicial district in which the voter resides.

SECTION 7. Tennessee Code Annotated, Section 2-10-109(b), is amended by deleting the subsection and substituting:

(b)

(1) A district attorney shall:

(A) Investigate a sworn complaint filed in accordance with § 2-10-108(c); and

(B) Upon review and the completion of the investigation of a complaint, refer its investigative report containing findings of potential violations, if any, to the registry for consideration of the assessment of civil penalties pursuant to § 2-10-110.

(2) The registry may, upon review of an investigative report received from a district attorney general under subdivision (b)(1)(B), dismiss the complaint if the complaint is not factually and legally sufficient. The registry shall notify the complainant of the dismissal. If the registry determines the complaint is factually and legally sufficient, the registry may set the complaint for a show cause hearing to determine if the registry should take action regarding the complaint, including, but not limited to, assessing civil penalties pursuant to § 2-10-110.

(3) Both the alleged violator and the complainant may, upon request, present evidence before the registry at or prior to the show cause hearing. The

registry shall notify the alleged violator and the complainant that evidence will be presented to the registry if requested. The registry may determine the appropriate procedure for presenting evidence. After the conclusion of the show cause hearing, the registry shall reduce its decision to writing and provide a written statement of the registry's decision to all parties.

SECTION 8. Tennessee Code Annotated, Section 2-10-110(a)(2)(B), is amended by adding the following language to the end of the subsection:

In a contested case proceeding, the candidate or political action committee bears the burden of proof to establish that the candidate or committee's conduct, or submitted reports, complied with the requirements of this part.

SECTION 9. Tennessee Code Annotated, Section 2-10-114, is amended by inserting the following language as a new subsection:

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(1) Transfers of funds or assets from a candidate's campaign account or a political action committee controlled by a candidate for a federal election to a candidate's campaign account or a political action committee controlled by the candidate for such candidate in an election for a state or local public office in this state are prohibited.

(2) Transfers of excess funds or assets from a candidate's political action committee or campaign account for election to a local public office to a political action committee or campaign account of or for such candidate in an election to the general assembly or governor in this state, or to federal office, are prohibited.

SECTION 10. Tennessee Code Annotated, is amended by deleting §§ 2-10-119 and 2-10-310(c) in their entirety.

SECTION 11. Tennessee Code Annotated, Section 2-10-206(a)(6), is amended by deleting the language "January 15" and substituting instead "July 1".

SECTION 12. Tennessee Code Annotated, Section 2-10-302, is amended by adding the following new subsections:

(e)

(1) A candidate for state or local public office, or an elected state or local public office holder, shall not accept a contribution with respect to an election in excess of the loans and obligations outstanding from such election after the close of the reporting period following the date of the election, not including the reporting period in which the election occurs. A successful candidate for state or local public office who reports no outstanding loans or obligations may continue to accept contributions for the purpose of defraying officeholder expenses until the close of the reporting period following the date of the election, not including the reporting period in which the election occurs.

(2) Beginning with the reporting period following the date of the election, not including the reporting period in which the election occurs, a candidate for state or local public office reporting an unexpended balance or an outstanding loan or obligation who has not affirmatively created a new campaign account for the next election shall, in addition to the reporting requirements established by §§ 2-10-105 and 2-10-107, file a complete copy of the candidate's campaign account banking statements corresponding to the full term of the reporting period with the registry or local election commission, as applicable. Such banking statements must continue to be filed by the candidate for each required reporting period until such time as the candidate no longer possesses an unexpended balance of funds or an outstanding loan or obligation, or until such time as the

candidate transfers such funds, loans, or obligations to another campaign fund for a subsequent election pursuant to § 2-10-114(a)(1), whichever occurs earlier. A failure to file the required banking statements is a Class 2 offense as defined by § 2-10-110(a)(2).

(3) This subsection (e) does not:

(A) Prevent a candidate who is a candidate in the general election, or such candidate's authorized political action committee, from paying primary election loans and obligations with funds which represent contributions made with respect to the general election; or

(B) Prevent a candidate who is a candidate in a run-off election, or such candidate's authorized political action committee, from paying loans and obligations with respect to the previous election with funds which represent contributions made with respect to the runoff election.

(f)

(1) Contributions received by a candidate or political action committee must be attributed to the appropriate election, and reported accordingly, in accordance with the following criteria:

(A) In the case of a contribution designated in writing by the contributor for a particular election, the election so designated; and

(B) In the case of a contribution not designated in writing by the contributor for a particular election, the next election after the contribution is made.

(2) A contribution designated in writing for a particular election, but made after that election, must be made only to the extent that the contribution does not exceed the contribution limits from such election. To the extent that such

contribution exceeds the contribution limits from such election, the candidate or the candidate's authorized political action committee shall either return the contribution to the contributor or obtain written authorization from the contributor to redesignate the contribution to another election within sixty (60) calendar days of the receipt of the contribution.

(g)

(1) A contribution made by more than one (1) person, except for a contribution made by a partnership, must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. If a contribution made by more than one (1) person does not indicate the amount to be attributed to each contributor, the contribution is deemed to be attributed equally to each contributor.

(2) The limitations on contributions in this section apply separately to contributions made by spouses, even if only one (1) spouse has income, provided, that each spouse signs the check, money order, or other negotiable instrument or the separate contributions are designated in writing by the contributing spouses as being independent contributions. Contributions made from an account shared by spouses, regardless of the type of account, must be presumed to be made by the individual authorizing the contribution alone, absent the written designation of independent contributions.

(h) The limitations of this section apply separately with respect to each election.

An election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions in this section.

SECTION 13. Tennessee Code Annotated, Section 2-10-308, is amended by deleting subsections (c) and (e) and substituting instead:

(c) To request a waiver, reduction, or to contest a penalty imposed by the registry of election finance pursuant to this part, a person or political action committee shall file a petition with the registry of election finance. Such petition may be considered as a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In any such contested case proceeding, the person or political action committee bears the burden of proof to establish that the person or committee's conduct complied with the requirements of this part.

(e) If a civil penalty lawfully assessed and all lawfully assessed costs attendant to the penalty against a political action committee are not paid within thirty (30) calendar days after the assessment becomes final:

(1) The political action committee owing the civil penalty shall not receive contributions; make expenditures to support or oppose candidates; or make expenditures to other political action committees. The treasurer and officers of such delinquent political action committee shall not create another political action committee or serve as a treasurer or an officer for another political action committee until such penalty and all costs attendant to the penalty are paid in full; and

(2) The treasurer and the officers of the political action committee listed on the forms on file with the registry pursuant to § 2-10-105(e) at the time the conduct that gave rise to the civil penalty occurred are ineligible to qualify for election to a state or local public office until the penalty is paid.

SECTION 14. Tennessee Code Annotated, Section 2-10-121, is amended by deleting the section in its entirety.

SECTION 15.

(a) For purposes of promulgating rules and carrying out administrative duties necessary to effectuate this act, Sections 1, 2, 3, 11, and 12 take effect upon becoming a law, the public welfare requiring it. Sections 1, 2, 3, 11, and 12 take effect on January 1, 2024, for all other purposes, the public welfare requiring it.

(b) Sections 4-10, 13, and 14 take effect upon becoming a law, the public welfare requiring it.